

Katherine Eskovitz (CA Bar No. 255105)
 Brianna Pierce (CA Bar No. 336906)
 ROCHE FREEDMAN LLP
 1158 26th Street, Suite 175
 Santa Monica, CA 90403
 Email: keskovitz@rochefreedman.com
 bpierce@rochefreedman.com

Constantine P. Economides (*pro hac vice*)
 (Florida Bar No. 118177)
 ROCHE FREEDMAN LLP
 1 SE 3rd Avenue, Suite 1240
 Miami, FL 33131
 Tel: (305) 971-5943
 Email: ceconomides@rochefreedman.com

Joseph M. Delich (*pro hac vice*)
 ROCHE FREEDMAN LLP
 (NY Bar No. 5487186)
 99 Park Avenue, Suite 1910
 New York, NY 10016
 Tel: (646) 970-7541
 Email: jdelich@rochefreedman.com

*Counsel for Plaintiff,
 Ariel Abittan*

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

ARIEL ABITTAN,

PLAINTIFF,

v.

LILY CHAO (A/K/A TIFFANY CHEN, A/K/A
 YUTING CHEN), DAMIEN DING (A/K/A
 DAMIEN LEUNG, A/K/A TAO DING),
 TEMUJIN LABS INC. (A DELAWARE
 CORPORATION), AND TEMUJIN LABS
 INC. (A CAYMAN CORPORATION),

DEFENDANTS,

and

EIAN LABS INC.,

NOMINAL DEFENDANT.

Case No. 5:20-CV-09340-NC

**PLAINTIFF'S REPLY IN SUPPORT OF
 MOTION FOR AN ORDER ALLOWING
 DEFENDANTS LILY CHAO AND
 DAMIEN DING TO BE SERVED (1)
 THROUGH COUNSEL, (2) THROUGH
 TEMUJIN LABS INC. (DELAWARE'S)
 REGISTERED AGENT, (3) BY TEXT,
 OR (4) BY PUBLICATION;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT
 THEREOF**

Date: November 10, 2021
 Time: 1:00 p.m.
 Place: Courtroom 5, 4th Floor
 Judge: Hon. Nathanael Cousins

1 Federal Rule of Civil Procedure 4(d) provides:

2 An individual, corporation, or association that is subject to service under Rule 4(e),
 3 (f), or (h) **has a duty to avoid unnecessary expenses of serving the summons.**
 4 The plaintiff may notify such a defendant that an action has been commenced and
 request that the defendant waive service of a summons.

5 FRCP Rule 4(d). On January 7, 2021, Plaintiff's counsel sent valid requests for service waivers to
 6 Lily Chao's and Damien Ding's counsel.¹ But Chao and Ding did not waive service. Accordingly,
 7 Plaintiff has attempted service on—and provided actual notice to—Chao and Ding multiple times.
 8 *See* [ECF No. 83]. Nonetheless, Chao and Ding have contested every service attempt, and they now
 9 oppose the alternative service that would provide the additional notice they seek.

10 Because of Plaintiff's ongoing diligence—*e.g.*, hiring a private investigator, searching
 11 available records, attempting service at the only known residence for Chao and Ding, and
 12 attempting service at Temujin Labs, Inc. (the co-defendant that Plaintiff alleges was used by Chao
 13 and Ding as a vehicle for fraud)—alternative service is now justified. Simply put, Chao and Ding
 14 maintain that they are entitled to additional notice of the lawsuit, and Plaintiff has provided the
 15 Court legally supported means of providing that notice.

16 Nonetheless, Chao and Ding now oppose Plaintiff's request to provide that additional
 17 notice. *See* Opposition [ECF No. 99]. Plaintiff files this reply to address three flawed points raised
 18 in Chao's and Ding's Opposition.

19 First, Chao and Ding assert that Plaintiff has not acted diligently and failed to comply with
 20 the Court's July 19, 2021 Order. Those assertions are wrong.

21 Plaintiff has an immense, immutable interest in serving process on Chao and Ding. And
 22 Plaintiff is willing to exhaust any additional reasonable efforts to effect service. The problem,
 23 however, is that Chao and Ding have obfuscated their locations. Through a costly and time-
 24 confusing investigation, Plaintiff (relying on his counsel and investigator) researched available
 25 records relating to 8 addresses and 7 phone numbers connected to Ding and Chao. The investigation
 26

27 ¹ The notices and waivers were sent by Plaintiff's previous counsel to Chao and Ding's previous
 28 counsel at Fenwick & West LLP.

1 did not yield an alternative to the residence where Chao and Ding had hosted Plaintiff multiple
2 times: 69 Isabella Ave. And the investigation indicated that Chao and Ding continue to live at that
3 address. Accordingly, Plaintiff attempted service at that location—protected by a manned guard
4 gate—multiple times.

5 In challenging those service attempts, Chao and Ding concealed their address. Their counsel
6 carefully suggested that there was an absence of proof connecting Chao and Ding to the 69 Isabella
7 Ave. address. *See* [ECF No. 53 at 10; ECF No. 54 at Ex. E]. But Chao and Ding (and their counsel)
8 never affirmatively stated that they do not live there. *Id.* Nor did they state that they live somewhere
9 else. *Id.* And the public records have not revealed another location. In sum, the available public
10 records reflect substantial efforts by Chao and Ding to conceal their identities, assets, and residence.

11 Nonetheless, following the Court’s July 19, 2021, Plaintiff’s counsel expended additional
12 time and resources but could not identify an alternate address to serve Chao or Ding. Plaintiff’s
13 counsel, therefore, researched viable means of alternative service and, within the Court’s deadline,
14 set forth why one or more of those means are justified. Under these circumstances, Plaintiff acted
15 diligently, and the requested alternative service is warranted.

16 Second, Chao and Ding suggest that the “reasonable diligence” justifying alternative service
17 should be limited to the time period after the Court’s July 19, 2021 order. That assertion is factually
18 and legally wrong.

19 “‘Reasonable diligence’ means that ‘the plaintiff took those steps that a reasonable person
20 who truly desired to give notice would have taken under the circumstances.’” *Entrepreneur Media,*
21 *Inc. v. Casey*, No. 8:18-cv-01058-JLS-AGR, 2018 WL 6424515 (C.D. Cal. Oct. 1, 2018) (“Plaintiff
22 has been unable to locate and serve Casey personally, even after hiring a private investigator to
23 locate addresses associated with Casey. The Court finds this is sufficient to show that Casey cannot
24 with reasonable diligence be served through non-electronic means.” (quotation marks omitted)).

25 Accordingly, Plaintiff’s previous but unsuccessful attempts to serve Chao and Ding are
26 directly relevant. Those attempts—based on the costly efforts of a private investigator—
27 demonstrate that Plaintiff took steps that a reasonable person would take to give Chao and Ding

notice under the circumstances. The additional mailings to Temujin Labs Inc.—as well as the successful service via the Hague Service Convention of 3 copies of the summons and complaint through Temujin Labs Inc.’s registered agent in the Cayman Islands—add to that diligence.

Third, Chao and Ding suggest that service of process on their new counsel is inappropriate because their relationship with counsel “is not sufficiently close or enduring.” [ECF No. 99 at 6]. That suggestion is remarkable. After Plaintiff’s Motion highlighted that close relationship, Chao and Ding obtained new counsel not once, but twice, prior to filing their Opposition. Nevertheless, as their predecessors before them, the current counsel still represent all of the Defendants in this action, and it is “reasonably certain that [the served party] would be apprised of the service” via that new counsel. *Clark v. Farris-Ellison*, No. CV 19-8551-MWF-PLA, 2019 WL 8645757, at *2 (C.D. Cal., Dec. 12, 2019).

In sum, Chao and Ding—and their three sets of counsel—have received the complaint and summons in various ways. Nonetheless, Chao and Ding insist on receiving the complaint and summons via some additional mechanism, as long as that mechanism does not involve the methods proposed by Plaintiff and supported by applicable precedent. Plaintiff has made the required showing for alternative service, and Chao’s and Ding’s opposing arguments fail.

CONCLUSION

For the foregoing reasons, and as set forth in the Motion [ECF No. 83]—Plaintiff respectfully requests, pursuant to Rules 4(e) and 4(m), that the Court issue an order allowing 60 days to effectuate service on Chao and Ding and permitting service via one of the following methods:

1. serving a copy of the documents on Defendants’ counsel;
2. serving a copy of the documents on Temujin DE’s registered agent for service of process;
3. texting [and/or emailing] Defendants’ respective cell phone numbers [and/or email addresses] with a link to the service documents; and
4. publishing the summons in the San Jose Mercury four times with five days in between each publication.

1 Dated: October 25, 2021

ROCHE FREEDMAN LLP

2 /s/ Constantine P. Economides

3 Constantine P. Economides (*pro hac vice*)
(Florida Bar No. 118177)

4 ROCHE FREEDMAN LLP

1 SE Third Avenue, Suite 250

5 Miami, Florida 33131

Tel: (305) 971-5943

6 Email: ceconomides@rochefreedman.com

7 Katherine Eskovitz (CA Bar No. 255105)

8 Brianna Pierce (CA Bar No. 336906)

9 ROCHE FREEDMAN LLP

1158 26th Street, Suite 175

10 Santa Monica, CA 90403

Email: keskovitz@rochefreedman.com

bpierce@rochefreedman.com

11 Joseph M. Delich (*pro hac vice*)

12 ROCHE FREEDMAN LLP

(NY Bar No. 5487186)

13 99 Park Avenue, Suite 1910

New York, NY 10016

14 Tel: (646) 970-7541

Email: jdelich@rochefreedman.com

15 *Counsel for Plaintiff,*

16 *Ariel Abittan*